F

Supreme Court of the United States

No. 1

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. .....

DAVID SCHNEIDER and JOHN T. SOJA,

Petitioners,

vs.

STATE OF NEW JERSEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

David I. Stepacoff, Esq., on behalf of David Schneider, Petitioner, and Morris Spritzer, Esq., on behalf of John T. Soja, Petitioner, pray that a writ of certiorari issue to review the judgment of the New Jersey Supreme Court entered in the above case on November 21, 1960.

Jurisdiction.

The jurisdiction of this Court is invoked under the 5th and 14th Amendments to the Constitution of the United States.

The decision sought to be reviewed is a judgment of the Supreme Court of the State of New Jersey entered against

the defendants-petitioners on November 21, 1960. This judgment affirmed a judgment of the Superior Court of New Jersey, Appellate Division; said Appellate Division judgment having affirmed the County Court decision denying a motion for a new trial. The appeal before the New Jersey Supreme Court was predicated on the ground that the conviction of the defendants in the cause of *State of New Jersey* v. *David Schneider and John T. Soja* was the result of a denial of due process and should be reversed or at the very least remanded. The denial of due process arose by reason of the knowing use by the prosecutor of perjured testimony against defendants. The denial of due process also arose from the knowing suppression by the prosecutor of evidence favorable to the defendants. The quality of both the perjured and suppressed evidence was so substantial that if the truthful recitation of the facts and suppressed evidence were given to the trial jury, a change of verdict in all probability would have resulted.

This cause involves a *Federal Question* of substance raised first in the Middlesex (N. J.) County Court, then before the Superior Court of New Jersey, Appellate Division, and finally before the Supreme Court of the State of New Jersey. In dealing with this basic question neither the County Court nor the Superior Court did so much as refer to the constitutional issue. The Supreme Court of New Jersey disposed of this issue in a brief *per curiam* decision, the grave error of which will be hereinafter demonstrated.

Constitutional Sections Involved.

Amendment V, Constitution of the United States:

> "No person shall be • • • deprived of life, liberty, or property, without due process of law; • • •."

Amendment XIV, Constitution of the United States:

> "Section 1. • • • No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Questions Presented for Review.

Have the provisions of the 5th and 14th Amendments to the Constitution of the United States been violated, and has the accused been denied a fair and impartial trial, where:

(a) the prosecutor made knowing use of perjured testimony by the State's key witnesses to obtain a conviction?

(b) the testimony of the State's key witnesses at the trial differed significantly on material and substantial matters from their testimony before the grand jury and the prosecutor withheld the perjurious testimony from the defendants and the trial jury?

Where grand jury minutes, opened for inspection after trial, divulge the knowing use by the prosecutor of perjurious testimony on a material and substantial issue to secure the conviction of the defendants, have the accused, under the due process clause, been accorded a fair and impartial trial?

Where grand jury minutes, opened for inspection after trial, divulge the knowing suppression by the prosecutor of testimony favorable to the defendants on a material and substantial issue to secure the conviction of the defendants, have the accused, under the due process clause, been accorded a fair and impartial trial?

Statement of the Case.

a. Facts Relating to Constitutional Issue.

On May 15, 1956, defendants, David Schneider and John T. Soja, were convicted of extorting $2,000 from Charles Schechter and Morris Schechter in *1955* under the promise that they would use the power of their respective offices (Borough Attorney and Borough Councilman) to exhort and influence the Mayor and Council of South Plainfield (N. J.) to vote in favor of a junk yard license for the Schechters (D1a to D2a; D246a-22 to 25). At trial, defendants contended that the $2,000 paid to them in 1955 was a legitimate Democratic campaign contribution and that they were the victims of a conspiracy by the Schechters to frame defendants on false and baseless accusations of extortion. This conspiracy was in retaliation for the prosecution by Borough Attorney David Schneider of an action in the Municipal Court against the Schechters for violations of a local zoning ordinance and junk yard ordinance (D226a-7 to D227a-13), in which the Schechters pleaded guilty to both charges (D104a-8 to 10; D348a-40 to D349a-30); as well as the insistence of the Borough Council that the Schechters' junk yard be cleaned up and a proper fence erected (D339a-21 to 32). Compliance with these requirements would have been costly and burdensome to the Schechters, and failure to comply would have jeopardized a pending sale of the Schechters' junk yard (D142a-28 and 29). Both the Borough Council and their attorney were seeking to enforce compliance with the Borough ordinances in response to complaints from townspeople (D222a-28 and 29; D223a-8 to 19).

On October 7, 1958, defendants filed a notice of motion for a new trial based on newly discovered evidence which revealed the conspiracy and the perjury of the two chief

witnesses for the State (D3a) supported by five affidavits (D4a to D20a), including the affidavit of Peter Calderoni (D8a to D12a), a former business partner of Charles and Morris Schechter, who, unknown to the defendants, had been subpoened by the State at the time of trial (Supp. D1a), but never placed on the witness stand by the State.

On November 10, 1958, the State filed answering affidavits (D21a to D32a) which included the testimony of Peter Calderoni, the aforementioned affiant, before the Middlesex County Grand Jury (D24a to D32a). After filing additional affidavits, defendants petitioned for inspection of the grand jury minutes. On December 5, 1958, after due notice to the State, an order was entered (D38a) permitting defendants to inspect the testimony of Charles and Morris Schechter before the Grand Jury. This inspection disclosed the perjury of the Schechters which was knowingly used by the State; the inspection also revealed conflicting testimony of the Schechters before the Grand Jury which was knowingly suppressed by the prosecutor.

During the course of the trial on the alleged extortion of $2,000 in 1955, the prosecutor examined the defendants and the State's witnesses on campaign contributions made in 1954 as well as 1955. Thus Charles Schechter testified in rebuttal for the State that in 1954 only $150.00 was given to the Democratic campaign (D383a-23 to 31; D384a-5 and 6, 12 and 13, 18 to 22, 28 to 32). The jury, therefore, was left with the impression that $150.00 was the yardstick for voluntary contribution in the year 1954. This amount the jury was allowed to contrast with the $2,000 payment in 1955 alleged by the Schechters to have been extorted. However, the grand jury minutes revealed that in their testimony before the grand jury both Morris Schechter (D39a-29 to 31) and Charles Schechter (D41a-7 to 11, 14 to 17, 34 to 36) had testified that $2,000 had been paid in 1954. The